

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

October 23, 2001

IN RE:

**PETITION OF ON-SITE SYSTEMS, INC.
TO AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY**

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**DOCKET NO.
00-01128**

**ORDER APPROVING AMENDMENT OF ON-SITE SYSTEMS, INC.'S CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY, FRANCHISE, AND COMMERCIAL
RATE ADJUSTMENT**

This matter came before the Tennessee Regulatory Authority (the "Authority") at a regularly scheduled Authority Conference held on July 10, 2001, to consider the Petition (the "Petition") of On-Site Systems, Inc. ("On-Site" or the "Company") to amend its Certificate of Public Convenience and Necessity ("CCN") to expand its service area to include the Town of Coopertown in Robertson County, Tennessee, for approval of a franchise granted by the Town of Coopertown ("Coopertown" or the "Town"), and for approval of a proposed adjustment of On-Site's commercial rates.

Authority Approval of CCN and Franchise

Tenn. Code Ann. § 65-4-201 requires a public utility to obtain "a certificate that the present or future public convenience and necessity require or will require" the establishment or construction of proposed utility facilities or the establishment of utility service in a specific area. In addition, Tenn. Code Ann. § 65-4-107 requires that any privilege or franchise granted to any public utility by the state of Tennessee or by any political subdivision thereof be approved by the Authority. Such approval is to be granted only after a hearing and upon a determination by the

Authority that the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.

Background

On April 4, 1994, On-Site received a CCN in Docket No. 93-09040 from the Tennessee Public Service Commission to provide wastewater service to the Oakwood Subdivision in Maury County. Since that time, through various other dockets, On-Site has been granted approval to expand its service territory to include other areas in Tennessee.

On-Site's Petition

On December 21, 2000, On-Site filed its Petition requesting amendment of its CCN to include Coopertown. The Petition also requests approval of a franchise granted by Coopertown. The Petition states that the Town, which has the sole right to provide sewer service within its territory, has granted On-Site a franchise to provide sewer service in the city. The franchise is contained in Coopertown Ordinance 00-13, which was passed on November 28, 2000. On-Site also requests that the Authority approve a reduction in its existing commercial rates and filed revised commercial tariff sheets with its Petition.

On-Site filed a rate schedule with its Petition which states that residential rates for Coopertown will be as follows:

Total monthly charge	Lagoon	\$30.98
	Sand-Gravel Filter	\$35.11
Non-payment fee		5% of monthly charge
Disconnection fee		\$10
Reconnection fee		\$15
Returned check fee		\$20
Access fee		\$84/year

This rate schedule comports with the rate schedule for On-Site approved by the Authority in Docket No. 99-00393 on January 11, 2000.

Franchise Fees

When On-Site's Petition was originally filed, no franchise fee was part of the franchise. However, the Petition was amended on March 9, 2001 to include a franchise fee authorized by the Town (Coopertown Ordinance 01-01). The fee ranged from \$4.00 per month for residential customers to \$35.00 per month for commercial and industrial customers. On-Site filed an amended rate schedule which reflects the inclusion of the proposed franchise fee in the residential rates. By letter dated May 14, 2001, the Hon. Herman Davis, Mayor of Coopertown, informed the Authority that the Town would amend the fee so that it would be expressed as a percentage of the billed cost of service to each customer. The amount was to be six percent (6%) and would have applied to all customer classes.

On-Site's Hearing

Pursuant to a Notice of Hearing issued on May 1, 2001, a Hearing on On-Site's Petition was held on May 15, 2001. At the Hearing, the Directors heard testimony from Mr. Charles Pickney, On-Site's president, and from Mayor Davis.

Mr. Pickney testified that On-Site's proposed service will benefit the citizens of Coopertown by increasing property values and encouraging growth, which will in turn increase the Town's revenues. Mr. Pickney stated that septic tanks and overflows are the only means of wastewater disposal currently available to Coopertown's residents. In addition, Mr. Pickney testified that he is confident that On-Site is capable of maintaining the proposed system in Coopertown. According to Mr. Pickney, the Tennessee Department of Environment and Conservation has never cited any of On-Site's systems for being out of compliance with the

Department's regulations.¹

Mr. Pickney further testified that because of its decentralized method, On-Site may place up to twenty (20) separate systems in Coopertown. According to Mr. Pickney, On-Site will not have difficulty obtaining adequate land on which to locate these systems because the Town is lightly populated and because the land on which the system serving a particular customer is located does not have to be contiguous with the customer's residence but could be located up to a quarter of a mile away or more.

Mayor Davis testified that the Town studied the possibility of purchasing its own wastewater system but determined that such a system would cost "\$5 million and upwards" and was therefore cost prohibitive.² Mayor Davis stated that he definitely believed that the overall benefits of On-Site's proposed system outweighed any costs to Coopertown. According to Mayor Davis, in the past four years, the population of Coopertown has doubled and is expected to double again within the next five years. Mayor Davis testified that the only options he was aware of for the Town's residents were to continue using septic tanks or to use On-Site.

Mayor Davis testified that the Town added a franchise fee requirement to its franchise ordinance after being approached by a developer who planned to develop a large subdivision, which made the Town realize that the increased development made possible by On-Site's service would increase the Town's expenses. Mayor Davis cited expected increases in the Town's expenses for fire and police protection as well as the Town's annual contribution to the county

¹ Mr. Pickney testified that he did not expect environmental concerns to increase with the increase in the number of systems. Mr. Pickney stated that the Tennessee Department of Environment and Conservation, Division of Water Pollution Control, regularly monitors On-Site's systems and is "very comfortable" with the treated wastewater that On-Site's systems return to the environment. Transcript of Proceedings, Docket No. 00-01128, May 15, 2001, p. 66.

² *Id.*, p. 61.

school system. Mayor Davis also cited such “indirect costs” as street repairs.³ Mayor Davis stated that the Town currently has no property tax but does impose a sales tax.

Mayor Davis testified that the Town held public hearings before final passage of the franchise ordinance and that the Company provided “at least two or three” open forums on Saturday afternoons to explain its system to the public.⁴ Mayor Davis further testified that the public was well aware of the proposed franchise fee and had not objected to the fee.

Following the Hearing before the Authority, on May 24, 2001, the Town amended the franchise (Coopertown Ordinance 01-12) to reflect a reduction of the proposed franchise fee to three percent (3%) to apply to all customer classes.

Commercial Rates

In conjunction with its request for approval of a franchise and an extension of its CCN, On-Site requests approval of a change in its commercial rate schedule. This change is reflected in revised tariff rate sheets filed with the Petition and a February 5, 2001 letter to the Authority.

By Order dated October 30, 2000, in Docket No. 00-00272, the Authority granted an extension of On-Site’s CCN to include the Townsend Town Square area in Blount County. This area is a shopping center and is currently On-Site’s only commercial customer. Along with the petition in that docket, On-Site filed separate rate schedules for commercial customers whose businesses involve food service and those whose businesses do not involve food service, and these rate schedules were approved by the Authority.

Each of these schedules provides for a minimum bill for up to 300 gallons of designed daily flow regardless of treatment (sand-gravel filter or lagoon) or disposal (drip irrigation or

³ *Id.*, p. 46. In a letter submitted following the Hearing, Mayor Davis stated that Coopertown would incur “direct costs” as a result of the On-Site franchise such as administrative costs, advertising costs, and attorney’s fees, as well as other long-term costs associated with exchanging information with On-Site. Letter from Mayor Herman Davis, Town of Coopertown, to Chairman Sara Kyle, Tennessee Regulatory Authority, May 22, 2001.

⁴ Transcript of Proceedings, Docket No. 00-01128, May 15, 2001, p. 54.

point discharge) type, except for off-site treatment, for which On-Site charges pass-through costs plus a flat fee. A monthly fee is then added for each additional 1,000 gallons of designed daily flow. This monthly fee varies according to treatment and disposal type. On-Site's revised commercial tariff rate sheets put a cap on the rates for each additional 1,000 gallons. Under the revised tariffs, for designed daily flows over 3,000 gallons, the monthly charge on all disposal and treatment configurations would be lowered to the rate for the category with the lowest rate (lagoon plus drip irrigation).

During the May 15, 2001 Hearing, Mr. Pickney testified that the Company would now be serving significantly higher volume customers, thus reducing its per unit cost for wastewater service. The proposed changes in the rate structure would only affect high volume users. Mr. Pickney also testified that the existing customers and infrastructure of the Company would not be adversely affected by the proposed rate reduction and that no rate increase will be sought to compensate for any reduction in revenues experienced by the Company.

Findings and Conclusions

On-Site has presented sufficient evidence to demonstrate that Coopertown will benefit from the franchise. On-Site will provide a clean, flexible, and affordable alternative to septic tanks, the only means of wastewater disposal currently available to Coopertown's residents. The record in this matter shows that On-Site's proposed service in Coopertown is "required by the present or future public convenience and necessity" and thus meets the requirements set forth in Tenn. Code Ann. § 65-4-201. In addition, the Coopertown franchise "is necessary and proper for the public convenience and properly conserves the public interest" and thus meets the requirements of Tenn. Code Ann. § 65-4-107.

Tenn. Code Ann. § 65-4-105(e) requires that "any franchise payment . . . shall, insofar as practicable, be billed pro rata." Either of the revised fees would be pro rata and would thus

satisfy the requirements of Tenn. Code Ann. § 65-4-105(e). Although the proposed fee does not appear to be prohibited on the basis of Tenn. Code Ann. § 65-4-105(e) or any other provision of Tennessee law, the Authority can and should scrutinize the fee under the standards contained in Tenn. Code Ann. § 65-4-107 as part of the Authority's determination of whether the franchise "properly conserves the public interest." In this instance, however, the proposed franchise fee is not so excessive as to render the franchise contrary to the public interest. The Authority also finds that the proposed adjustment of its commercial rates is a reasonable and, indeed, commendable action on On-Site's part and is fully supported by evidence in the record. On-Site may charge its customers the three percent (3%) franchise fee based on the residential rates originally filed with the Petition and the adjusted commercial rates.

On July 10, 2001, On-Site's Petition came before the Authority at a regularly scheduled Authority Conference. Upon consideration of the Petition and the entire record, the Authority finds that the proposed service meets the standards set forth in Tenn. Code Ann. §§ 65-4-107 and 65-4-201, and the Authority accordingly grants On-Site's Petition. In addition, the Authority approves On-Site's proposed adjustment of its commercial rates.

IT IS THEREFORE ORDERED THAT:

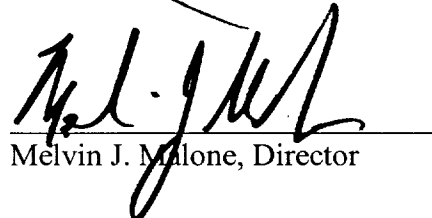
1. The Petition of On-Site Systems, Inc. to amend its Certificate of Public Convenience and Necessity to expand its service area to include the Town of Coopertown in Robertson County, as shown in the map attached to the Petition, is approved;
2. The Petition of On-Site for approval of a franchise granted by the Town of Coopertown in Coopertown Ordinance 00-13, as amended to require a three percent (3%) franchise fee, is approved;
3. On-Site's rates for wastewater service to the Town of Coopertown shall be as listed in the rate schedule filed with On-Site's Petition and as set forth in this Order;

4. On-Site's proposed adjustment of its commercial rates, as set forth in revised tariff rate sheets filed with its Petition, is approved; and


5. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary